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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,979	08/22/2003	Ann Louise McCormack	19615	1058

23556 7590 11/01/2006

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EXAMINER	
MATZEK, MATTHEW D	
ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,979	MCCORMACK ET AL.	
	Examiner	Art Unit	
	Matthew D. Matzek	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) *28-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☒ Claim(s) *11 and 12* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/10/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/23/2006 has been entered.

Response to Amendment

2. The amendment dated 7/24/2006 has been fully considered and entered into the Record. The previously applied objections to claims 1 and 24 have been withdrawn due to amendment. The rejection of claim 2 under 112 2nd paragraph have been withdrawn due to explanation of its limitations by Applicant. The previously applied prior art rejection of claims 1-27 have been withdrawn as the applied art failed to teach filler contained only within discreet regions of said carrier resin phase and thereby separated from contact with said letdown phase. The previously applied obvious double patenting rejection over Application 10/335,244 has been withdrawn as the applied reference failed to teach filler contained only within discreet regions of said carrier resin phase and thereby separated from contact with said letdown phase. Claims 1-30 are currently pending, but claims 28-30 have been withdrawn due to amendment.

Claim Objections

3. Claims 11 and 12 are objected to because of the following informalities: the term "LLDPE" must be written out in its entirety. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-5 and 7-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al. (US 6,106,956) in view of Haffner et al. (US 6,045,900).

a. Heyn et al. teach a polymeric film comprising at least a first and second contiguous and coextruded portions, wherein the first portion contains filler to increase its water vapor permeability and the second portion serves to improve the tensile strength of the film (Abstract). The first portion (carrier resin) of the film may be made of linear low-density polyethylene copolymer (LLDPE) (col. 2, lines 52-67). It is preferred that the carrier resin contains 65 weight percent or less filler (col. 3, lines 60-65). The second portion (letdown resin) may be made of the same or different polyolefins and as with the first resin the preferred composition is LLDPE. The second portion preferably contains no filler (col. 4, lines 26-39). The LLDPE used in this film is to have a density of about 0.900 to about 0.935g/cm^3 and a melt index of about 0.1 to about 5.0 grams per 10 minutes (col. 3, lines 10-15). The applied film meets the instantly claimed moisture vapor transmission rates (col. 6, lines 49-56) for diaper backsheets. The applied reference is silent as to the use of a nonwoven support layer to be bonded to the oriented film. Instant claim 1 requires different ethylene copolymers with a density difference of at least 0.003 g/cc between the carrier and letdown resins. This is provided for by Heyn et al. in that densities of the ethylene copolymers may vary from 0.900 to about 0.935g/cm^3 and that the same or different copolymers may be used in the separate phases.

b. Haffner et al. teach a breathable barrier comprising a film layer comprising a filled film comprising about 50 to 70% calcium carbonate (col. 8, lines 23-25) and ethylene polymer (Abstract) and another layer comprising a nonwoven, spunbonded or bonded carded web layer (col. 3, lines 50-52). The laminate has a WVTR (MVTR) of more than 1500 g/m^2/day (col. 3, lines 34-37). Example 1 teaches the use of calcium carbonate (filler), LLDPE [carrier resin] (density of 0.918 g/cm^3 and a melt index of 3.5 g/10 min) and a LDPE [letdown resin] (density of 0.916 g/cm^3 and a melt index of 12 g/10 min). Examiner takes the position that the filler is necessarily contained within the carrier resin phase as the filler is mixed with the carrier resin and then formed into a layer.

c. The basis weight of the film layer desirable ranges from 15-35 g/m^2 (col. 10, lines 59-64). An extensive list of ethylene (polyolefin) polymers has been disclosed including linear low-density polyethylene (LLDPE) (col. 7, line 49 – col. 8, line 8). The nonwoven layer may comprise spunbonded and bonded carded webs (col. 3, lines 46-52).

d. Claims 17 and 18 are rejected as the nonwoven woven layer may comprise multilayer nonwoven laminates (col. 11, lines 4-10). Claims 19 and 20 are rejected as the film layer may comprise multiple layers **12** (Fig. 1). Haffner et al. teach a WVTR in excess of 1500 g/m^2/day. This anticipates the breathability of instant claim 23. Claim 25 is rejected as the base layer **14** comprises from about 50% to about 98% of the multilayer film thickness (col. 10, lines 66-67). Claims 26 and 27 are rejected as the breathable barrier of Haffner et al. may be used in garments and personal care products (col. 1, lines 14-17).

e. It is noted herein that the teachings of Haffner et al. include WVTR in excess of 1500 g/m^2/day. It is the Examiner's interpretation that such a teaching encompasses the ranges of 5,000 and 10,000 g/m^2/day as claimed herein. The use of material with high WVTR is recognized in the art of breathable barriers as it is evidenced herein by Haffner et al. The larger the WVTR value the greater the ability for the article to allow water vapor to be expelled from the article. This is highly desirable as the article is intentionally created for its breathability.

f. Since Heyn et al. and Haffner et al. are from the same field of endeavor (i.e. filler filled LLDPE films), the purpose disclosed by Haffner et al. would have been recognized in the pertinent art of Heyn et al.

g. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have bonded the film of Heyn et al. to the support layer of Haffner et al. as well as make the article according to the basis weights of Haffner et al. The skill artisan would have been motivated by the desire to create a breathable article that is capable of being used in personal absorbent articles.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al. (US 6,106,956) in view of Haffner et al. (US 6,045,900) as applied to claim 1 above, and further in view of Brady et al. (US 6,258,308). The inventions of Heyn et al. and Haffner et al. are silent as to the use of an ethylene with a melt index of at least 20g/10min.

a. Brady et al. teach the creation of breathable polyolefin films comprising filler (Abstract). It was found that the addition of small amounts of Low-density polyethylene with a Melt Index of 0.9 to 25 and a density of 0.900 g/cm^3 may be used and that it

allows higher throughput levels with little or not reduction in film breathability (col. 9, lines 29-35). Calcium carbonate is the particularly preferred filler (col. 10, lines 59-65).

b. Since Heyn et al. and Brady et al. are from the same field of endeavor (i.e. calcium carbonate filled LLDPE films), the purpose disclosed by Haffner et al. would have been recognized in the pertinent art of Heyn et al.

h. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have bonded the film of Heyn et al. to the support layer of Haffner et al. as well as make the article according to the basis weights of Haffner et al. The skill artisan would have been motivated by the desire to create a breathable article that is capable of being used in personal absorbent articles.

Double Patenting

6. Claims 1-27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-30 of copending Application No. 10/703,761. Although the conflicting claims are not identical, they are not patentably distinct from each other because both articles are directed to breathable laminates of polyethylene with common densities and melt indices with the filler located in discreet regions of a carrier resin separate from a letdown resin phase.

7. Claims 1-27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30-33 and 37-43 of copending Application No. 10/918,553. Although the conflicting claims are not identical, they are not patentably distinct from each other because both articles are directed to breathable

laminates of polyethylene with common densities and melt indices with the filler located in discreet regions of a carrier resin separate from a letdown resin phase.

Response to Arguments

8. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mdm

MDM

Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

10/27/06